In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 619

S. B. ALLEN, ET AL., PETITIONERS

v.

W. LEWIS DAVID, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The order of the United States District Court for the Southern District of Texas (R. 352) is not reported. The opinion of the United States Court of Appeals for the Fifth Circuit (Pet. 3a) is reported at 334 F. 2d 592.

JURISDICTION

The judgment of the court of appeals was entered on July 16, 1964 (Pet. 1a). A petition for rehearing, timely filed, was denied on August 20, 1964 (Pet. 21a). The petition for a writ of certiorari was filed on October 26, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

755-053—64

QUESTION PRESENTED

Whether petitioners' complaint was properly dismissed for failure to exhaust their administrative remedies.

STATUTE AND REGULATIONS INVOLVED

The pertinent parts of the Agricultural Adjustment Act of 1938, as amended, 7 U.S.C. 1281, *et seq.*, and of the regulations promulgated by the Secretary of Agriculture in implementation of that Act, are set forth in the appendix to the petition, pp. 23a–34a.

STATEMENT

This action was brought by seven Texas rice producers on behalf of themselves and others similarly situated to enjoin the respondents, members of the Texas State Agricultural Stabilization Committee, from cancelling and retroactively revising rice acreage allotments that previously had been issued for the 1962 crop year. The cancellations were based upon the finding that the allotments had been obtained fraudulently. The district court, concluding that petitioners had failed to exhaust the administrative remedies provided in the Agricultural Adjustment Act (7 U.S.C. 1281, *et seq.*), notably the remedy of *de novo* review by the local review committee under 7 U.S.C. 1363, dismissed for lack of jurisdiction, and the court of appeals affirmed.

1. THE STATUTORY AND REGULATORY SCHEME

Under the Agricultural Adjustment Act, the Secretary of Agriculture is required to determine a national acreage allotment for rice and apportion it among the several rice producing States. 7 U.S.C.

1353(a). The State acreage allotment is then apportioned to farms owned or operated by "persons who have produced rice in the State in any one of the five calendar years immediately preceding the year for which such apportionment is made * * *." 7 U.S.C. 1353(b). By regulations issued under 7 U.S.C. 1375 (b), the Secretary has provided that the county committee, before approving a producer's request for an acreage allotment, must satisfy itself that the applicant "will be actively engaged in the production of rice on such farm"—*i.e.*, that the producer has furnished land, labor, equipment or water adequate to service the entire allotment claimed, 7 C.F.R. 730.1021 (d), 7 C.F.R. 730.1011(g)(2). The regulations further provide that if the county or State committee has reason to believe, after the establishment of a farm acreage allotment, that a tenant whose acreage was allocated to a particular farm was not in fact actively participating in the production of the rice crop produced on the farm in a particular year, the county committee (with the approval of the State committee) may recall the producer's allotment acreage and adjust the farm's allotment accordingly. 7 C.F.R. 730.1021(e).

Notice of the farm marketing quota must be mailed to the farmer, and any farmer dissatisfied with his quota may have it reviewed by a local review committee composed of three farmers from the same or nearby counties. 7 U.S.C. 1363. If the farmer is dissatisfied with the determination of the review committee he may, within 15 days, file a bill in equity in the district court, naming the review committee as the defendant. 7 U.S.C. 1365. Review is limited to ques-

tions of law, and the findings of fact by the review committee, if supported by evidence, are conclusive. 7 U.S.C. 1366. The statute provides that this review procedure shall be exclusive. 7 U.S.C. 1367.

2. THE PROCEEDINGS IN THIS CASE

Petitioners, by applications filed with their local county ASC committees, applied for and received rice acreage allotments for the 1962 crop year. The allotment authorizations expressly provided that the allotment would remain subject to revision should it later be determined that the allotment was established on the basis of incorrect information supplied by the applicant. Subsequently, an investigation by the Internal Audit Division of the Department of Agriculture disclosed that several Texas farmers had supplied erroneous information to their county ASC committees for the purpose of obtaining rice allotments.

In August, 1962, the county ASC committee held hearings to investigate the findings of the Internal Audit Division, and concluded that, notwithstanding their representations to the contrary, several Texas farmers who had applied for and received rice acreage allotments had not been "actively engaged in the production of rice." Accordingly, the fraudulently obtained allotments were cancelled and, pursuant to 7 U.S.C. 1356, penalties for overproduction were assessed against the farms that had enjoyed those allotments.

Instead of first availing themselves of their statutory right to have their quotas "reviewed by a local

review committee" (7 U.S.C. 1363), petitioners, whose allotments were cancelled, instituted this suit. Both courts below held that the procedure for review prescribed in the Act could not be circumvented and dismissed the complaint for failure to exhaust administrative remedies.

ARGUMENT

Petitioners seek to circumvent the procedures prescribed in the Agricultural Adjustment Act for the review of acreage allotments and marketing quotas. Both courts below agreed that petitioners had failed to exhaust available administrative remedies. Since that conclusion is correct and there is no conflict of decisions, further review by this Court is not warranted.

1. It is settled that a court may not entertain a suit before the administrative process is exhausted. *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U.S. 41; *Allen* v. *Grand Central Aircraft Co.*, 347 U.S. 535; *Corpstein* v. *United States*, 262 F. 2d 200 (C.A. 10), certiorari denied, 359 U.S. 966. The Agricultural Adjustment Act of 1938, as amended, expressly provides for administrative review before a local review committee for any farmer who is dissatisfied with his farm marketing quota. 7 U.S.C. 1363. Only after resorting to that administrative remedy may the farmer, by a bill in equity, seek review in the district court. The proceeding thus instituted, which the statute expressly provides shall be exclusive, is based entirely upon the administrative record; review is limited to questions of law; and the findings of the review committee, if supported by substantial evi-

dence, are conclusive. Moreover, Congress provided not only that the record and findings of the review committee should be the sole basis for judicial scrutiny, but also that the review committee itself must be the party defendant. 7 U.S.C. 1366.

The courts have uniformly held that the review committee may not be bypassed—even where the committee's jurisdiction is under attack, *Rigby* v. *Rasmussen*, 275 F. 2d 861 (C.A. 10); *Miller* v. *United States*, 242 F. 2d 392 (C.A. 6), certiorari denied, 355 U.S. 833; *United States* v. *Bonderer*, 139 F. Supp. 391 (W.D. Mo.) or where the constitutionality of the statute is drawn into question, *Corpstein* v. *United States*, 262 F. 2d 200 (C.A. 10), certiorari denied, 359 U.S. 966; *Lee* v. *Roseberry*, 94 F. Supp. 324 (E.D. Ky.), and 200 F. 2d 155 (C.A. 6).[1] That rule is no less applicable where, as here, the applicants are challenging, not the acreage allotments as originally issued, but their reduction to zero by later cancellation. Plainly, therefore, the courts below were correct in concluding that they lack jurisdiction to entertain petitioners' premature complaint.

2. While the merits of the case are not now before this Court, we note that there is no substance to the

[1] For other cases holding that district courts do not have jurisdiction in situations where the administrative remedy established by 7 U.S.C. 1363 has not been exhausted see: *Weir* v. *United States*, 310 F. 2d 149 (C.A. 8); *United States* v. *Jeffcoat*, 272 F. 2d 266 (C.A. 4); *Donaldson* v. *United States*, 258 F. 2d 591 (C.A. 6); *Crolley* v. *Tatton*, 249 F. 2d 908 (C.A. 5), certiorari denied, 356 U.S. 966; *United States* v. *Strangland*, 242 F. 2d 843 (C.A. 7); *United States* v. *Jonnson*, 155 F. Supp. 898 (W.D. Ark.); *United States* v. *Lillard*, 143 F. Supp. 113 (W.D. Mo.); *Hawthorne* v. *Fisher*, 33 F. Supp. 891 (N.D. Tex.).

contention that the Secretary lacks authority to cancel retroactively acreage allotments procured through misrepresentation. In the exercise of his statutory duty to issue necessary regulations (7 U.S.C. 1375 (b)), the Secretary has provided that an allotment issued on the strength of information supplied by an applicant may be canceled if that information is later determined to be false. It is axiomatic that a duly issued administrative regulation may be overturned only if it is "unreasonable and plainly inconsistent with" the statute it is designed to implement. *Commissioner of Internal Revenue* v. *South Texas Lumber Co.*, 333 U.S. 496, 501; *accord, e.g., United States* v. *Shimer*, 367 U.S. 374, 381–383; *Federal Housing Administration* v. *The Darlington, Inc.*, 358 U.S. 84, 90. Here the administrative reservation of the right to recall allotments predicated on erroneous information is clearly reasonable and is not inconsistent with any provision of the statute.[2]

Moreover, petitioners were fully apprised of the fact that the mere issuance of allotments would not serve to insulate them from the imposition of penalties should it subsequently be found that their privilege was obtained through fraud. For every rice

[2] Petitioners' reliance on 7 U.S.C. 1363 (Pet. 10–15) which provides that a farm marketing quota is final unless, within fifteen days, an application for review is filed with the local review committee is misplaced. That provision merely defines the right of the farmer to obtain administrative, and ultimately judicial, review. It is not intended to limit the right of the Secretary to correct any allotment or marketing quota obtained through fraud or misrepresentation. To construe it otherwise would be to put a premium on non-disclosure.

farm operator is given explicit notice at the time he receives his acreage allotment and marketing quota that an allotment "is subject to such changes as may be necessary * * * taking into account * * * any incorrect data or information used in establishing this allotment * * *."

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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